

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14**

**MIDWEST DIVISION - RMC, LLC, D/B/A  
RESEARCH MEDICAL CENTER**

**and**

**NNOC – MISSOURI & KANSAS/NU, AFL-CIO**

**Cases: 14-CA-287441  
14-CA-286571  
14-CA-278811**

**and**

**SERVICE EMPLOYEES INTERNATIONAL  
UNION HCIL, MISSOURI/KANSAS DIVISION**

**RESPONDENT’S REQUEST FOR SPECIAL PERMISSION AND APPEAL OF ORDER  
DENYING MOTION TO SEVER**

Pursuant to § 102.26 of the Rules and Regulations of the National Labor Relations Board (NLRB or Board), Respondent files this Request for Special Permission and Appeal of Order Denying Motion to Sever proceedings as follows:

**I. BACKGROUND**

The Hospital filed a Motion to Sever the above cases on April 22, 2022. Administrative Law Judge Amchan denied the Motion on April 25, 2022. The Order is attached hereto as Attachment A. The Hospital files this prompt request for special permission to appeal because without an immediate appeal the Hospital will not have an opportunity to assert its rights under the Act. The Consolidated Hearing in these cases is scheduled to begin May 10, 2022. The regulations specifically provide for the appeal of such Orders in Section 102.26. The Order fails to consider the factors required by Board law. The Hospital appeals as follows:

Respondent (Hospital) is an acute care Hospital in Kansas City, Missouri. The original Complaint dated February 28, 2022, in the above-captioned case relates to Charge No. 14-CA-

287441 which was filed by labor organization NNOC on December 9, 2021. NNOC represents a unit including all full-time, part-time and per diem Registered Nurses at the Hospital. The NNOC Charge alleges a single violation of the Act related to Union Representative Julie Perry's attendance at a September 17, 2021 grievance meeting.

On April 12, 2022 the Regional Director of Region 14 issued a Consolidated Complaint (Complaint) consolidating the above case with completely unrelated cases involving a separate labor organization, a separate unit of employees, completely unrelated allegations, and completely unrelated witnesses.

The first Consolidated Case relates to Charge No. 14-CA-286571 which was filed by SEIU on June 22, 2021 and involves allegations related to Respondent's conduct during a decertification election which SEIU lost in a vote tally held on June 14, 2021. SEIU represented technical employees, service and maintenance employees, excluding all other positions. Corresponding objections were filed on or about June 22, 2021 with mirror allegations to the ULP Charge.

The other Consolidated Case relates to Charge No. 14-CA-278811 also filed by SEIU on November 19, 2021. This SEIU Charge relates to the post-vote count refusal of the Hospital to recognize the Union as the collective bargaining representative of employees in the former SEIU unit. After a lengthy investigation by the Region, on February 8, 2022, all the objections were overruled and a Certification of Results was issued.

## **II. STANDARD**

Whether to grant or deny a Motion to Sever is within the judge's discretion, "considering such factors as the risk that matters litigated in [an earlier trial] will have to be relitigated in [a second trial] and the likelihood of delay if ... severance, is granted." *Service Employees Local 87 (Cresleigh Management)*, 324 NLRB 774, 775–776 (1997). The Cresleigh decision is

consistently reaffirmed in Board decisions. See McDonalds USA, LLC, 363 NLRB 847, 864 (2016), “In order to determine whether consolidation or severance is appropriate, the ALJ should consider issues such as ‘the risk that matters litigated in the first proceeding will have to be relitigated in the second and the likelihood of delay if consolidation, or severance, is granted.’ *Service Employees Local 87 (Cresleigh Management)*, 324 NLRB at 775-776.”; Unbelievable, Inc., 324 NLRB 1225, 1226 (1997) “As the Board observed in *Cresleigh*, any party may move to consolidate or sever a complaint with any complaint against the same respondent pending before an administrative law judge. When presented with such a motion, the judge has the discretion to determine whether consolidation, or severance, of any complaint is warranted, considering such factors as the risk that matters litigated in the first proceeding will have to be relitigated in the second and the likelihood of delay if consolidation, or severance, is granted. 324 NLRB at 778.”; and *Affinity Medical Center*, 364 NLRB 876 (2016) (judge did not abuse her discretion in denying the General Counsel’s motion to consolidate three new complaints with the existing “highly complex 118-page amended consolidated complaint” given that the old and new allegations were not sufficiently intertwined to require consolidation and could be effectively litigated separately, and consolidation would cause significant delay in the ongoing proceeding).

The standard while allowing “discretion” specifically identifies the factors to be considered. The factors were not considered in the ruling. Upon consideration of the factors the Order must be vacated and the cases severed.

### **III. ARGUMENT**

The factors to be considered in deciding whether cases are properly consolidated are absent herein. The parties are completely unrelated. The Units represented by the labor organizations are

completely unrelated. NNOC has an ongoing representation right of the Hospital's RN's, while SEIU no longer represents any employees at the Hospital. SEIU did not appeal the decision certifying the results of the election and overruling all election objections.

The allegations in the Charges are completely unrelated and do not have any common legal ground. As mentioned above, the NNOC case involves a single incident regarding whether a union representative was denied attendance at a grievance meeting she wanted to attend by telephone. (*See* CC 7)<sup>1</sup>. The SEIU cases allege Section 8(a),(1) violations related to five incidents occurring during the decertification election period. (*See* CC 5(a) – (e)). The other SEIU case allegations relate solely to whether the Hospital had an obligation to recognize SEIU following the decertification vote tally. (*See* CC 9 and 10).

None of the witnesses are the same for the Hospital, NNOC, or SEIU. No potential factual finding in the NNOC case would relate to the SEIU case. No potential factual finding in the SEIU cases would relate to the NNOC case. There is no risk that any of the matters litigated in the NNOC matter would have to be relitigated in a second SEIU case.

As for the General Counsel's argument that Kevin Meyers is a central figure in all the cases, Respondent disagrees. The Report on Objections and Certification of Election does not even mention Meyers' name. The alleged violations in Paragraph 5 of the Complaint lists the individuals alleged to have violated Section 8(a)(1). Meyers' name is not there. Meyers' role in the third case consists of undisputed correspondence between the SEIU and Hospital. Meyers is not a central figure and that is insufficient reason to consolidate the cases.

As to any issues or any consideration of delay if severance is granted, a number of considerations weigh against consolidation and in favor of severance. First, the Regional Director

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<sup>1</sup> Citations to the Consolidated Complaint are designated as "CC" with the appropriate paragraph number.

herein has simply meshed completely independent cases into a single case after a lengthy investigation of the SEIU Charges. It is undisputed that the Hospital promptly responded to the investigation of all the cases providing timely and complete Statements of Position and documentation. Also, because SEIU does not represent any employees, regardless of the date such representation ended, there is no harm or prejudice to any of the parties by properly scheduling a second hearing for the SEIU matters. Therefore, none of the NLRB's stated principles for proper consolidation of these cases are present. The cases should never have been consolidated in the first place and must be severed.

#### **IV. CONCLUSION**

Based on the above, the Order must be vacated and the cases severed.

Dated this 29<sup>th</sup> day of April, 2022.



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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on April 29, 2022, he served the foregoing **RESPONDENT’S REQUEST FOR SPECIAL PERMISSION AND APPEAL OF ORDER DENYING MOTION TO SEVER**, to the following individuals via U.S. Mail and where indicated via E-mail.

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# **ATTACHMENT A**



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

MIDWEST DIVISION-RCM, LLC, D/B/A  
RESEARCH MEDICAL CENTER

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UNION HC II, MISSOURI/KANSAS DIVISION

**ORDER DENYING RESPONDENT’S MOTION TO SEVER**

Respondent has moved to sever the unfair labor practice cases in which the NNOC is the charging party from those in which the SEIU is the charging party. The motion is denied because the Regional Director did not abuse his or her discretion in consolidating these matters.

The standard to be applied in review of a Regional Director’s decision to consolidate cases is whether the Regional Director abused his or her discretion, *Service Employees Local 87 (Cresleigh Mgmt. Inc.)* 324 NLRB 774 (1997); *International Brotherhood of Teamsters (Overnite Transportation Company)* 130 NLRB 1020, 1022 (1961); Sec. 102.33 of the Board’s Rules of Procedure. While the cases do not appear to be factually related, they involve the same Respondent and possibly some of the same agents of the Respondent. Respondent has not made a compelling case on which to find an abuse of discretion in the consolidation of these matters.

The Respondent Employer’s motion to sever is DENIED

Dated: Washington, D.C.  
April 25, 2022



Arthur J. Amchan  
Deputy Chief Administrative Law Judge